ENVIRONMENTAL CONTROL BOARD

Notice of Promulgation of Rule

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED in the Environmental Control Board by Section 1049-a of the New York City Charter, and in accordance with Section 1043(b) of the Charter, that the Environmental Control Board hereby promulgates the following rule. The rule was published in The City Record on July 9, 2010 and a Public Hearing was held on August 10, 2010.

Section 1. Buildings Penalty Schedule II, found in Section 3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, is amended to add two new entries immediately following the entry in that penalty schedule for BC3319.8.8, "Erection, jumping, climbing, dismantling operations of a tower or climber crane not in accordance with 3319.8.8," to read as follows:

New material is underlined.

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty	Mitigated Penalty	Default Penalty	Aggravated I Penalty	Aggravated I Default Penalty	Aggravated II Penalty	Aggravated II Default – Maximum Penalty
ZR 11-62	Class 2	Violation of discretionary Zoning conditions on privately owned public space	No	No	$4,000	No	$10,000	$10,000	$10,000	$10,000	$10,000
Misc. Violation of ZR	Class 2	Misc. violation of condition on as of right privately owned public space	No	No	$4,000	No	$10,000	$10,000	$10,000	$10,000	$10,000

Statement of Basis and Purpose of Final Rule

The Environmental Control Board (ECB) held a Public Hearing on August 10, 2010 on amendments to ECB's Buildings Penalty Schedule II, found in Section 3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York. These amendments pertain to the enforcement of the New York City Zoning Resolution (ZR) in relation to Privately Owned Public Spaces (POPS). Neither written comments nor oral testimony were presented.

ECB has added two charges to its Buildings Penalty Schedule II. The first charge is ZR 11-62(Class 2), "violation of discretionary Zoning conditions on privately owned public space" and the second charge is Misc Violation of ZR (Class 2), "Misc. violation of condition on as of right privately owned public space".

ZR 11-62 allows the Department of Buildings to issue violations if a person or entity fails to comply with any conditions or restrictions in special permits, variances, authorizations or certifications granted under the ZR.

The Department of City Planning (DCP) is the approving authority on the creation of POPS in exchange for additional floor area in certain buildings within the City's high-density commercial and residential districts. These areas typically contain some visual and functional amenities for the public use and enjoyment, and are designed to provide additional light, air, green space and breathing room to ease the hard-scaped character in the densest areas of the City.

In 2007, the New York City Council adopted revised standards for all outdoor POPS, representing a significant update to and consolidation of all previous plaza design regulations into one outdoor plaza designation – the "public plaza." The 2007 text is intended to facilitate the design and construction of unique and exciting outdoor spaces. The rule changes primarily appear in Chapter 7 of Article III and in Appendix E of the Zoning Resolution.

Whenever DCP observes non-compliance through its site visit, or, receives a complaint of non-compliance with a particular POPS, it usually contacts the owner and arranges to meet in order to have them come into compliance. If this process fails, DCP will then contact the Department of Buildings to inspect and issue any violations observed.

These changes are being sought so that the Department of Buildings may effectively enforce these violations. The violations will be classified as Major (Class 2) violations. The high penalties indicated will serve as a deterrent to the likelihood of business owners ignoring these violations as a nominal cost of doing business. Additionally, because outreach is made to these property owners to resolve violating conditions prior to the issuance of violations, there will be no cure, stipulation or mitigation for these violations.